



DEPARTMENT OF NATURAL RESOURCES

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MEMORANDUM

DATE: November 8, 2004
TO: Land Reclamation Commission
FROM: Mike Larsen; Chief, Non-Coal Unit (*original signed by Mike Larsen*)
SUBJECT: **S&S Quarries, Inc.: History of Events and Formal Complaint #2700 for failure to abate Notices of Violation #482-001 and #482-002.**

July 20, 2004

Notices of Violation #482-001 and #482-002 were received by the permittee. The violations were issued for: #001 - failure to permit and bond all affected acres and, #002 – failure to control erosion and off-site sedimentation.

August 4, 2004

Initial abatement of the violations was due.

August 12, 2004

A follow up inspection of the mine site was conducted. It was determined that no work had been completed in order to abate the violation (#482-002) addressing off-site sedimentation. As of the date of this memo, no additional permit materials or bonding have been received by the program in order to add additional acres affected (#482-001).

October 13, 2004

An informal conference was held with the staff director to discuss the facts of the violations and proposed penalty assessments. The conference revealed that the current permittee, Mr. Randy Adkisson, S&S Quarries, Inc., has contracted with an individual in West Plains, Missouri to conduct all mining and reclamation activities at the site. Mr. Adkisson has essentially “lost all control” (his words) over this individual with respect to compliance at the mine site and is unable to abate either notice of violation.

Mr. Adkisson is aware that a failure on the part of a permittee to abate a notice of violation will result in the filing of a Formal Complaint by the staff director with the Land Reclamation Commission. Mr. Adkisson is in agreement with the process and fully understands the consequences of a Formal Complaint and failing to remedy a notice of violation.

RECOMMENDATION:

Because the permittee has neglected to abate the Notices of Violation and because it is apparent that no action will be taken towards abatement, the staff recommends that the Land Reclamation Commission:

1. Sign the Notice of Formal Complaint for failure to abate Notices of Violation #482-001 and #482-002.
2. Notify the permittee that a formal complaint has been filed against him and that he has fifteen (15) days to either request a hearing, abate the violations which are the basis of this Formal Complaint, or take no action which will result in a recommendation at the next regularly scheduled commission meeting to either suspend or revoke permit #0482.

In the Matter of)
S&S Quarries, Inc.)

FORMAL COMPLAINT

1. On July 20, 2004, S&S Quarries, Inc. received by certified mail Notices of Violation #482-001 and #482-002 .

The permittee failed to permit and bond all affected acres on site (#482-001) and the permittee has failed to control erosion and off-site sedimentation (#482-002).

444.765.1 and 10 CSR 40 – 10.010 (1).– Notice of Violation #482-001.
444.774.1.(1),(2), and (10), and 10 CSR 40 – 10.050 (4).– Notice of Violation #482-002.

#482-001 – Properly permit and bond all affected acres.

#482-002 – Properly install erosion/sediment control measures. Properly grade, topsoil, and seed sediment source areas (overburden stockpiles).

#482-001 - \$470.00.

#482-002 - \$870.00.

6. The Notices of Violation listed above were received by the permittee on July 20, 2004. The Notices have exceeded the original abatement due dates. The permittee has not complied with the remedial measures identified in the Notices as of the date of this Formal Complaint.

7. 10 CSR 40-10.070(3)(A)1 states that: "The director shall issue a formal complaint to the commission if the abatement measures have not been met within the prescribed time frame."

8. Section (3)(B) further states: "The formal complaint shall be in writing, signed by the director and include: 1. The nature of the violation; 2. The law or regulation violated; 3. Remedial action required; 4. The statement that the permittee has a right to a hearing; and 5. The proposed penalty assessment on the original violation."

9. Section (3)(C) states: "The permittee may request a hearing by the commission within fifteen (15) days of receipt of the complaint by the permittee."

It is the recommendation of the Staff Director that the actions outlined in paragraph 6 constitute both adequate attempts to resolve these matters and are evidence that further attempts would not be effective.

It is further the position of the Staff Director that the failure on the part of the permittee to abate Notices of Violation #482-001 and #482-002 constitutes adequate grounds, under the provision of section 444.787 and 10 CSR 40-10.070 for the Staff Director to seek permit revocation and collection of the associated bond(s) or suspension of the permit.

WHEREFORE, the Staff Director requests the Commission to either suspend or revoke permit #482 issued to S&S Quarries, Inc. provided that the permittee does not request a hearing on this matter within fifteen (15) days of receipt of the formal complaint or successfully completes the abatement measures specified in the Notices of Violation also within the fifteen (15) day timeframe.

Respectfully submitted

Larry P. Coen, R. G.
Staff Director, Land Reclamation Program

File: S&S Quarries, Inc.; Formal Complaint #2700; and Enforcement (Permit #0482).

CERTIFIED MAIL

Mr. Randy Adkisson
S&S Quarries, Inc.
6005 County Road 8800
West Plains, MO 65775

Dear Mr. Adkisson:

On July 22, 2004, the Missouri Land Reclamation Commission (Commission) signed the attached Notice of Formal Complaint. You may request a hearing by the Commission within fifteen (15) days from the receipt of this Notice. If you wish to request a hearing, a written request is required to be returned to the Director of the Land Reclamation Program within fifteen (15) days. The address is:

Director, Land Reclamation Program
P.O. Box 176
Jefferson City, MO 65102

If you do not request a hearing within the fifteen (15) day period or provide proof that the Notices of Violation in question have been fully abated, the Commission, as provided by section 444.778 RSMo (Supp. 1994), may proceed to either suspend or revoke permit #482 issued to S&S Quarries, Inc. and collect the associated bonds.

Missouri law requires that corporations may only proceed in a legal matter, such as an appeal, through legal counsel duly licensed to practice law in the State of Missouri. See, *Reed v. Labor and Industrial Relations Commission* 789 S.W. 2d 19 (MO. banc 1994). Any pleading filed by a non-attorney for a corporation is considered null and void and will not be accepted by the Land Reclamation Commission. An individual may proceed on his own behalf without counsel. Only a legal counsel duly licensed to practice law in the State of Missouri may represent others in front of the Commission.

If you have any questions, you may contact me at (573) 751-4041.

Sincerely,

Larry P. Coen, R.G., Director
Land Reclamation Program

LPC/mlt

Enclosures